



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Mr. Michael R. Davis
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR95-859

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32868.

The Department of Public Safety (the "department") received an open records request for "any and all investigatory records, reports, and documents in possession of the [department] including but not limited to the Texas Rangers relating to the investigation of the death [of his father]." You state that "the ongoing nature of the investigation, murder having no statute of limitations, places the report in question into the category of exempt public information." You contend, therefore, that a related report prepared by the Texas Rangers, which you submit for our review, is protected from required disclosure by section 552.108 of the Government Code. Quoting Open Records Decision No. 127 (1976) at 7-8, you argue that the department should withhold this report from disclosure "to protect [such] valid interests as maintaining as confidential the investigative techniques and procedures used in law enforcement and insuring the privacy and safety of witnesses willing to cooperate with law enforcement officers."

Section 552.108, commonly referred to as the law enforcement exception, protects from required disclosure:

- (a) [A] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . ;
[and]

(b) [A]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

Gov't Code § 552.108. When an incident involving allegedly criminal conduct is under active investigation, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 474 (1987), 372 (1983). When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and other information. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. See generally *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). To determine what information must be released, however, the type of information must be examined rather than where it is located in related documents. See Open Records Decision No. 127 (1976) at 5. When the law enforcement exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how its release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3 (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. *Id.* at 2.


We limit our decision to the documents submitted for our review. We conclude that section 552.108 is applicable to all but the information that is of the type that was determined to be public information in *Houston Chronicle Publishing Co.*, and Open Records Decision No. 127 (1976).

The department also raises section 552.101 as an exception to required public disclosure of the documents.¹ However, the department supplies this office with no argument establishing how and why this exception applies to the requested information. See Open Records Decision No. 542 (1990). Because section 552.101 is a mandatory exception that protects information deemed confidential by law, which a governmental body is prohibited from releasing, we review the documents to determine if information otherwise releasable includes information that would be confidential by law. We find no information that is confidential by law.

¹Section 552.101 excepts from required disclosure information which is confidential by law, either constitutional, statutory, or by judicial decision.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kathryn P. Baffes". The signature is fluid and cursive, with the first name "Kathryn" being more prominent.

Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/KHG/rho

Ref.: ID# 32868

Enclosures: Submitted documents

cc: Mr. Jack McCollum
3248 East Broadway, #195
Pearland, Texas 77581
(w/o enclosures)